
OPINION OF THE PUBLIC ACCESS COUNSELOR

CLIFFORD W. SHEPARD,
Complainant,

v.

HENDRICKS CIRCUIT COURT,
Respondent.

Formal Complaint No.
18-FC-97

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Hendricks Circuit Court (“Court”) violated the Access to Public Records Act¹ (“APRA”). The Court responded to the complaint through the Honorable Daniel Zielinski, judge. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 12, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Around June 12, 2018, Clifford Shepard (“Complainant”) submitted a records request to the Hendricks County Clerk’s Office for a copy of a court recording. An office manager advised him he could arrange to come and listen to the hearing. When Shepard arrived to inspect the recording, he was disallowed from making a copy of the audio on his own equipment.

As a result, Shepard filed a formal complaint with this Office.

Judge Zielinski responded on behalf of the Court. He argues that while the Court allowed Shepard to listen to the recordings, the State Court Administration advised against permitting individuals to make recordings on their own devices. Any person may purchase an official court copy, however, and Shepard was not denied from doing so.

ANALYSIS

The Access to Public Records Act (“APRA”) states that it is the public policy of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.² Toward that end, providing the people with information is an “essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.”³ The Hendricks Circuit Court is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect

² Ind. Code § 5-14-3-1.

³ *Id.*

and copy the Court's public records during regular business hours unless the records are not subject to disclosure under APRA's mandatory or discretionary exemptions. *See* Ind. Code §§ 5-14-3-4(a) and (b).

The issue of court recordings has been a frequent topic as of late, however, mostly in the context of the balance between the Rules of Judicial Conduct, the Administrative Court Rules, and the Access to Public Records Act. To my knowledge, the issue of whether an individual may make a copy of a court recording on a personal device is a matter of first impression for this Office.

Court recordings of judicial proceedings, unless otherwise prohibited by statute, are disclosable public records. Normally, and rightfully so, judges will exercise discretion to monitor the dissemination of court records to ensure judicial integrity. The commentary to Court Administrative Rule 10 emphasizes this:

The court is required to preserve the integrity of audio and video recordings of court proceedings. The judge may employ various methods for ensuring the recording is not altered, including but not limited to supervised playback for listening or copying, creating a copy of the recording for use during said playback, serving notice to the parties that the recording is being accessed, and providing a copy, clearly identified as such.

Typically, an individual may make copies of any public record using his or her own device. Indiana Code section 5-14-3-3(b) provides:

Within a reasonable time after the request is received by the agency, the public agency shall *either*:

(1) provide the requested copies to the person making the request; *or*

(2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on the person's own equipment.

(emphasis added). This additional discretion—permitting agencies to either provide copies or allow the individual to use their own equipment—gives further weight to the notion that judges can decide how to provide access to court proceedings.

Based on the information provided, it is unclear what Hendricks County charges for a copy of its court recordings, but so long as it is not prohibitively expensive, charging a reasonable fee for a copy is appropriate.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Hendricks Circuit Court did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the printed name of the Public Access Counselor.

Luke H. Britt
Public Access Counselor